

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JEFFREY SCOTT MEMERING,

Defendant-Appellee.

UNPUBLISHED

August 27, 1999

No. 212358

Recorder's Court

LC No. 98-002959

Before: Gage, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's decision to quash the information charging defendant with two counts of obtaining more than one hundred dollars by false pretenses with intent to defraud, MCL 750.218; MSA 28.415. We affirm in part, reverse in part, and remand for further proceedings.

Defendant was employed by a transmission shop in Belleville. He was charged after an investigation revealed that the transmission shop at which he worked was charging people for installing new transmissions, but never actually installing them. The district court bound defendant over for trial on two counts, one pertaining to a Lincoln automobile and the other to an Astro van. Defendant made a motion to quash, which the circuit court granted, finding that defendant did not have knowledge of the misrepresentations that were taking place at the transmission shop.

On appeal, plaintiff contends that the circuit court erred in quashing the information, arguing that sufficient evidence was presented before the district court to bind defendant over. We agree in part. We review a circuit court's decision to grant or deny a motion to quash a felony information de novo to determine if the district court abused its discretion in ordering bindover. *People v Northey*, 231 Mich App 568, 574; 591 NW2d 227 (1998). We will address both of the prosecutor's issues on appeal in a single discussion of whether the district court abused its discretion in ordering defendant's bindover.

Although a prosecutor is not required to prove each element of a crime beyond a reasonable doubt when attempting to bind a defendant over, evidence for each element of the crime charged or evidence from which the elements may be inferred must be presented. *People v Selwa*, 214 Mich App

451, 456-457; 543 NW2d 321 (1995). “A district court must bind a defendant over for trial when the prosecutor presents competent evidence constituting probable cause to believe that (1) a felony was committed and (2) the defendant committed that felony.” *Northey, supra*, at 574, citing MCL 766.13; MSA 28.931; MCR 6.110(E). A determination by the district court that sufficient probable cause exists to bind defendant over will not be disturbed unless that determination is completely unjustified by the record. *Id.* A finding of probable cause requires a reasonable belief that the evidence presented at the preliminary examination is consistent with the defendant’s guilt. *Id.* at 575. “Circumstantial evidence, coupled with those inferences arising therefrom, is sufficient to establish probable cause that the defendant committed a felony.” *Id.* When considering whether to bind a defendant over, the district court should consider the credibility and weight of the evidence; however, it may not usurp the jury’s role. *Id.* Evidence that supports and negates an inference that the defendant committed the crime charged presents a factual issue that should be left to the jury. *Id.*

The elements of false pretenses with intent to defraud over one hundred dollars are:

(1) the defendant must have used a pretense or made a false statement relating to either past or then-existing facts and circumstances; a pretense is any statement, device, trick, document, writing or object which is false; (2) at the time he made or used the pretense, the defendant must have known it to be false; (3) at the time he made or used the pretense, the defendant must have intended to defraud or cheat someone; (4) the person alleged to have been defrauded must have relied on the false pretense made by the defendant; (5) in so relying, that person must have suffered the loss of some money or other valuable thing; and (6) the property which was taken must have had a fair market value which exceeded, that is, was over, \$100 at the time of the obtaining of the property. [*People v Peach*, 174 Mich App 419, 422-423; 437 NW2d 9 (1989).]

In regards to the first count in the felony information, we believe that the circuit court erred in granting defendant’s motion to quash. The circuit court was of the opinion that the evidence did not establish that defendant had knowledge of the misrepresentations occurring at the transmission shop. However, the evidence at the preliminary examination revealed that defendant told the owner of the Lincoln automobile that it would need a new transmission, that defendant claimed the Lincoln’s transmission was removed and rebuilt, that defendant painted the bottom of the Lincoln’s transmission silver, and that the Lincoln’s transmission was never removed. Based upon this evidence, a reasonable inference would be that defendant knew that the Lincoln’s transmission had not been removed and he painted the transmission silver to make it appear as though it were a new transmission. Given this inference, the knowledge element of false pretenses with intent to defraud over one hundred dollars was satisfied by the evidence presented at the preliminary examination. We also find that evidence was offered as to all of the other elements of the crime. Therefore, the district court did not abuse its discretion in binding defendant over on this count.

As to the second count pertaining to the Astro van, we agree with the circuit court that evidence was not presented on all of the elements. Evidence was offered that defendant took the money for the work done on the van and that he completed the work order, but nothing demonstrated that defendant was aware that the van’s transmission had not been replaced. Furthermore, there was no evidence that

defendant performed any work on the van, or had any connection with the van beyond completing the work order and collecting the money when the job was completed. Without evidence showing that defendant knew that the van's transmission had not been replaced, it cannot be shown that defendant intended to defraud the van's owners. Defendant could not have been properly bound over on this count because no evidence was offered on the knowledge element of obtaining over one hundred dollars by false pretenses with intent to defraud. Therefore, we conclude the district court abused its discretion when it bound defendant over on the second count because the court's determination was "wholly unjustified by the record." *Northey, supra*, at 574.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage

/s/ Michael R. Smolenski

/s/ Brian K. Zahra